



LETTER
TO THE
HON. GEORGE E. BADGER,
OF THE
UNITED STATES SENATE,
AS
VINDICATION OF THE RIGHTS
OF THE
CHEROKEES IN NORTH CAROLINA
TO THE
NEUTRAL LANDS,
BY JAMES TAYLOR.

W. H. MOORE, *Printer.*

TO THE
HON. GEORGE E. BADGER,

UNITED STATES SENATOR.

WASHINGTON, *January 12, 1854.*

SIR: I beg leave to call your attention to the following explanation in regard to the rights of the North Carolina Cherokees to the neutral lands, so called; which lands were proposed to be ceded to the United States by the delegation of Western Cherokees sent to this place at the close of the last Congress, fully authorized by the Principal Chief of the nation to negotiate said sale. In the first place, I propose to show, by a part of the message of the Principal Chief to the National Council of the Cherokee nation, which appeared in the *National Intelligencer* of November 15, 1853, that hard measures have been assumed by the Principal Chief against a portion of the Cherokee people remaining in the State of North Carolina, in which he says:

"That the late delegation to Washington failed in their mission to sell to the government the neutral land, so called; and he protests against a claim set up on behalf of the Cherokees who remain in North Carolina to a certain interest in the proceeds of said land in case it should be re-purchased by the United States."

Whereas, by the assumption of the Principal Chief of making his protest a national topic, I beg leave respectfully to show by the stipulation of the several treaties negotiated with the Cherokee tribe of Indians and the several acts of Congress, and also by the acts of the Legislature of North Carolina, that the rights and claims of those Cherokees who remained in the State of North Carolina has ever been recognised. At the time the treaty of 1835 was concluded, the land ceded under the first article was owned by the Eastern portion of the tribe, as will be seen by reference to the census taken immediately preceding the date of the treaty.

Article 1st provides as follows:

"The Cherokee nation hereby cede, relinquish, and convey to the United States all the lands owned, claimed, or possessed by them east of the Mississippi river, &c., for and in consideration of the sum of five millions of dollars, to be expended, paid, and invested in the manner stipulated and agreed upon in the following articles."

W. H. MOORE, *Print.*

The second article provides as follows :

"Whereas, by the treaty of May 6, 1828, and the supplementary treaty thereto of February 14, 1833, with the Cherokees west of the Mississippi, the United States guaranteed and secured, to be conveyed by patent to the Cherokee nation of Indians, the following tract of country," &c., &c., so as to "make seven millions of acres within the whole described boundaries." "In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the nation a perpetual outlet west," &c.

The last clause of this article provides that the United States, in consideration of five hundred thousand dollars, to be deducted from the sum of five millions, stipulated to be paid by the United States for the cession of the lands east of the Mississippi, in the first article, conveyed to the Cherokees the lands that is now proposed to be ceded to the United States :

"And whereas it is apprehended by the Cherokee people, that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi, the United States, in consideration of the sum of five hundred thousand dollars therefore, hereby covenant and agree to convey to the said Indians and their descendants, by patent, in fee simple, the following additional tract of land, situated between the west line of the State of Missouri and the Osage reservation, beginning at the southeast corner of the same, and running north along the east line of the Osage lands fifty miles, to the northeast corner thereof, and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land."

The 15th article of the treaty provides for deducting the \$500,000 given for the additional quantity of land aforementioned from the price of the lands ceded to the United States under the first article :

"It is expressly understood and agreed between the parties to this treaty, that after deducting the amount which shall be actually expended for the payment of improvements," &c., "and the additional quantity of land," &c., the balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation east, according to the census just completed."

The lands were held in common, as a family, not as a civilized nation, and the necessity of a census was to know with whom to treat and to whom to make payments. In comparing the census taken of the North Carolina Cherokees, under the act of July 29, 1848, with the census taken of the tribe in 1835, it will prove that those included in the latter were embraced in the former, notwithstanding the North Carolina Cherokees were neither present nor represented at the negotiation. The treaty, as its provisions show, was intended to be made acceptable to them in order to procure their acquiescence, and to induce them to surrender the country they occupied, which they held under a grant from the State, bearing date to wit :

[HELD AT HILLSBOROUGH ON THE EIGHTEENTH OF APRIL, 1783.]

“CHAPTER II.—[Page 417.]

An act for opening the land office for the redemption of specie and other certificates, and discharging the arrears to the army.

LANDS RESERVED BY THE CHEROKEE INDIANS.

“SECTION 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the Cherokee Indians be and they are authorized to hold all that tract of land bounded as follows, *to wit:* Beginning on the Tennessee River, the southern boundary of this State intersects the same, nearest the mouth of the same, to the middle of the Tennessee River, to the middle of the French Broad River, which lines are not to be changed; thence to the mouth of the French Broad River, to the mouth of Big Moccasin River, thence to the mouth of the French Broad River, thence along the dividing ridge between the waters of the French Broad River, to the southern boundary of this State. All the lands within the above described lines, shall be, and are hereby reserved to the Cherokee Indians, and to their heirs forever, any thing herein to the contrary notwithstanding.

PENALTY FOR ENTERING, &c., CHEROKEE LANDS.

“SECTION 2. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no person shall enter any land reserved to the Cherokee Indians situated in the said Cherokee Indians, under the penalty of forfeiting the sum of one hundred dollars, to be recovered in any court of law, in and for the State of North Carolina, by any person who will sue for the same; and any person who shall be convicted of such offence, shall be utterly void.

“SECTION 3. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no person, for any consideration, shall purchase, or take any gift or lease of any tract of land reserved to the Cherokee Indians, but all such bargains, sales, leases, or other conveyances, shall be null and void; and the person so purchasing, or taking any gift or lease of any land of any Indian or Indians as aforesaid, shall be liable to a sum of one hundred pounds specie for every hundred acres of land so purchased, leased, or taken as aforesaid; one-half to the use of the State of North Carolina, and the other half to be recovered in the same manner as aforesaid.

“SECTION 4. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That no person shall pay any injuries from people hunting, ranging, or driving stocks of horses, cattle, or hogs on the lands hereby allotted them, for the same, under the penalty of forfeiting the sum of fifty pounds specie; that it shall not be lawful for any person or persons, or themselves, to hunt or range on the said lands, or to drive stocks of cattle, hogs, or hogs thereon, on pain of forfeiting the sum of fifty pounds specie for every offence, together with such stock or stocks of horses, cattle, or hogs so driven; to be recovered by any person who shall sue for the same, in the manner aforesaid.”

It was known at the time of the treaty, that the North Carolina Cherokees were opposed to the removal west, and the 12th article provided that they could have the right to remain in the State, and to purchase lands for themselves to reside on while they chose to remain east. That article also provided that they should have pre-emption rights to purchase the lands, including their improvements.

The expenses of the removal, and of subsisting them one year after their removal west, and having their share of the land laid off for them, would, it was supposed, encourage them to remove and join the tribe west.

I am sorry to find the combination of the Cherokee agent with the authorities of the nation west, against the diminutive portion of the tribe remaining in the States east. In a letter dated "September 13, 1853," to "Gov. Thos. T. Drew, superintendent of Indian affairs, Van Buren, Arkansas," which appeared in the annual report of George W. Manypenny, Commissioner of Indian Affairs, 1853, page 141, No. 48, in which the former says:

"The Cherokee government has not yet effected any arrangement for the liquidation of its debt, and some of its creditors are getting clamorous for their money," &c. "A majority of the people, however, prefer a retrocession of the neutral land to the United States government, as a means of enabling the nation to pay its debts. This plan, I think, the most feasible at present, and would respectfully recommend that the United States government enter into negotiations with the Cherokees for that purpose. Much dissatisfaction exists here with those Cherokees who still reside in North Carolina, in consequence of their claiming an equal *per capita* interest in the neutral land. If those remaining in Carolina would remove west and become citizens of this nation, they would be received and welcomed as friends and brothers, and at once admitted to equal rights with those now here; but while they remain citizens of a different government," &c., "I think the authorities here have good cause to protest against their right to any interest in this soil. I would therefore recommend that they be required to remove west, or abandon all claims to any interest in this country."

It is much to be regretted that so little has transpired in the nation west since the emigration in 1838 to encourage those of the tribe remaining in the States east to unite with their brethren west, under the precarious circumstances of the nation. The war of extermination that has been waged between other portions of the tribe, covering the land with innocent blood, have driven hundreds of the tribe into the surrounding States, to obtain protection for themselves and families, the tendency of which prevented the Cherokees remaining in the States east enjoying peace and quietness from joining their brethren west.

The State of North Carolina acquiesced in their remaining, by the legislature passing an act in 1836-'37 for their protection, prescribing the mode of concluding legal contracts, and recognised their right to be represented by attorneys:

"That all contracts of every nature and description made after the eighteenth of May, one thousand eight hundred and thirty-eight, with the Cherokee Indians, or any person of Cherokee Indian blood within the second degree, for an amount equal to ten dollars or more, shall be null and void, unless some memorandum thereof be made in writing, and signed by such Indian, or person of Indian blood, or by some other person by him authorized, in the presence of two creditable witnesses, who shall also subscribe the same."

Again, the legislature of North Carolina passed the following resolutions in their favor:

"RESOLUTIONS RELATIVE TO THE CHEROKEE INDIANS.

"Resolved, That our Senators and Representatives in the Congress of the United States are hereby requested to use their influence in favor of obtaining a speedy settlement of the just claims of the Cherokee Indians residing in this State," &c.

⁴ *Resolved, further*, That his excellency the governor be requested to send a copy of the foregoing resolution to the senators and representatives in Congress.

"Read three times in the General Assembly, and ratified 9th January, 1845.

"EDWARD STANLY,

"*Speaker of the House of Commons.*

"BURGESS S. GATHER,

"*Speaker of the Senate.*"

The treaty of 1846 made further provisions for those Cherokees east: it, however, established their rights to remain, while they chose to do so in the States, and at any time they desired to remove to the lands occupied by the tribe west of the Mississippi, they could do so, fully recognising their rights to the lands west in common with the balance of the Cherokee people.

The first article of that treaty provides:

"That the land now occupied by the Cherokee nation *shall be secured to the whole Cherokee people*, for their common use and benefit, and a patent shall be issued for the same, including the eight hundred thousand acres purchased, together with the outlet west, promised by the United States in conformity with the provisions relating thereto, contained in the third article of the treaty of 1835, and in the third section of the act of Congress approved May 28, 1830, which authorized the President of the United States, in making exchange of land with the Indian tribes, to *assure the tribe or nation with which the exchange is made, that the United States will forever secure and guarantee to them and their heirs or successors the country so exchanged with them.*"

The 4th article of the treaty provides that all portions of the Cherokee people, eastern as well as western Cherokees, shall have the same interest in the lands west, and that it shall not be regarded as the exclusive property of any portion of the tribe:

"And whereas it has been decided by the board of commissioners recently appointed by the President of the United States to examine and adjust the claims and difficulties existing against and between the Cherokee people and the United States, as well as between the Cherokees themselves, that under the provisions of the treaty of 1828, as well as in conformity with the general policy of the United States in relation to the Indian tribes, and the Cherokee nation in particular, that that portion of the Cherokee people known as the 'old settlers' or Western Cherokees, had no exclusive title to the territory ceded in that treaty, but that the same was intended for the use of, and to be the home for, the whole Cherokee nation. By the operation of the treaty of 1828 the Cherokees then west of the Mississippi, by the equitable operation of the same treaty, acquired a common interest in the lands occupied by the Cherokees east of the Mississippi river, as well as those occupied by themselves west of that river, which interest should have been provided for in the treaty of 1835."

This article then provides that the United States shall compensate the Cherokees residing west at the time the treaty of 1835 was concluded for their interest in the land east ceded under that treaty, which is shown by the following stipulation:

"In consideration of the foregoing on the part of the United States, the Western Cherokees or old settlers hereby release and quit claim to the United States all right, title, interest, or claim they may have to a common property in the Cherokee land east of the Mississippi river, and to the exclusive ownership of the lands ceded to them by the treaty of 1833 west of the Mississippi, including the outlet west, consenting and agreeing that the said land, together with the eight hundred thousand acres ceded to the Cherokees by the treaty of 1835, *shall be and remain* the common property of the whole Cherokee people, themselves included."

The 9th article provides "that the United States agree to make a fair and just settlement of all moneys due to the Cherokees, and subject to per capita division;" and the balance thus found to be due shall be paid *per capita* in equal amounts to all those individuals, heads of families, or their legal representatives, entitled to receive the same under the treaty of 1835 and the supplement of 1836, being all those Cherokees residing east at the date of said treaty.

The 10th article provides :

"It is expressly agreed that nothing in the foregoing treaty shall be so construed as in any manner to take away or abridge any rights which the Cherokees remaining in the States east of the Mississippi river had or may have under the treaty of 1835 and the supplement thereto."

This provision of the treaty recognises the rights of the Cherokees remaining in the State east, of continuing there as long as they chose to do so, and at the same time revives and perpetuates to them and their descendants, as a part of the "Cherokee people," their interest in the lands and annuities west, under the right to settle the lands at any subsequent period. The act of Congress of July 29, 1848, clearly proves that that body considered the North Carolina Cherokees as having the same right to the land occupied by the "Cherokee people" west of the Mississippi river, as the portion of the tribe now residing in that country, to wit:

"SEC. 4. *And be it further enacted*, That the Secretary of War cause to be ascertained the number and names of such individuals and families, including each member of every family of the Cherokee nation of Indians that remained in the State of North Carolina at the time of the ratification of the treaty of New Echota, May twenty-three, eighteen hundred and thirty-six, and who have not removed west of the Mississippi, or received the commutation for removal and subsistence, and report the same to the Secretary of the Treasury, whereupon the Secretary of the Treasury shall set apart, out of any moneys in the Treasury not otherwise appropriated, a sum equal to fifty-three dollars and thirty-three cents for each individual ascertained as aforesaid, and that he cause to be paid to every such individual, or his or her legal representative, interest at the rate of six per cent. per annum on such per capita, from the said twenty-third day of May, eighteen hundred and thirty-six, to the time of the passage of this act, and continue annually thereafter said payment of interest at the rate aforesaid.

"SEC. 5. *And be it further enacted*, That whenever, hereafter, any individual or individuals of said Cherokee Indians shall desire to remove and join the tribe west of the Mississippi, then the Secretary of War shall be authorized to withdraw from the fund set apart as aforesaid the sum of fifty-three dollars and thirty-three cents, and the interest due and unpaid thereon, and apply the same, or such part thereof as shall be necessary to the removal and subsistence of such individual or individuals and pay the remainder, if any, or the whole, if the said Indians or any of them shall prefer to remove themselves, to such individuals or heads of families upon their removal west of the Mississippi: *Provided*, That the amount herein required to be funded for the benefit of the said Cherokees in North Carolina, and the amount required to be paid them, shall be charged to the general Cherokee fund, under the treaty of New Echota, and shall be reimbursed therefrom."

This act, like the 4th article of the treaty of 1846, referred to, provided for the removal of the North Carolina Cherokees to the Cherokee country west, at any subsequent period they may de-

sire: but while they have the right at any time to remove west, they also have a right to remain in North Carolina while it is their pleasure to do so: they have as perfect a right to chose to remain east as to go west, it being entirely optional with themselves. This law has set apart in the Treasury \$53 33 for each Indian, on which interest at the rate of six per cent. is to be paid to his or her legal representative while they remain in the State; and at any period any of those Indians or descendants desire to remove west, this principal is to be withdrawn, and used in removing them, and subsisting them one year after their arrival to the land that was assigned by the government for a home for the whole Cherokee people. And it certainly was not contemplated by Congress that a part of the Cherokee people west, should, without the consent of those east, exercise the power of appropriating this common property to their exclusive use, to the exclusion of the Eastern Cherokees, by which the former might deprive the latter of any home to remove to, and thus disappoint the benevolent intention of Congress in providing the means to remove them west.

By the first article of the treaty of 1835, as well as by the subsequent treaty of 1846, and the act of Congress of July 29, 1848, the Cherokees remaining east formed a part of the "Cherokee people" with whom the "exchange was made," and to whom the United States guaranteed the lands as provided by the act of 1830. This land was therefore owned by the Cherokee family or "Cherokee people," according to the last census, taken in 1851, number west of the Mississippi 17,207; in the States east of the Mississippi river, 2,133; in all, 19,400, besides a small number embraced in the agent's report, not included in the census of those east, which gives a little upwards of 740 acres to each Cherokee Indian. In addition to the land received in exchange for their lands east, the Cherokee people have the following funds invested by the United States for their benefit, which formed a part of the consideration for the land ceded to the United States under the treaty of 1835, as shown by the 15th article of that treaty, a national fund of..... \$404,000
For the purposes of education..... 300,000
Orphans' fund..... 50,000

754,000

This, at six per cent. interest, gives an annual income of \$45,240. And notwithstanding this large income, which is enjoyed exclusively by the portion of the tribe west, they seem to think it necessary to cede away a part of the land owned by the whole Cherokee people in part to discharge the debts of the nation, which at

most ought not to exceed the expenses of a county organization in one of the States.

In the first place, the agent has spoken but little for the authorities of the nation, or Cherokee government, in regard to its debt. It is the first government ever known to exist and carry out its national affairs without having a revenue law—a poorly managed government, that could not be made to support itself without the retrocession of a part of the common domain. The latter, if adopted, will soon cause its extinction, and by the former would soon exonerate it of its embarrassments.

It will be necessary for the government of the United States to guard the interest of the portion of the tribe remaining in the States east, not only in the land, but also in the permanent funds of the nation. We consider that our rights thereto rest on strong equitable grounds. We contributed our proportion of \$500,000 paid to the United States for the lands proposed to be ceded.

The policy of the United States, as shown by the acts of 1830 and 1848, was to unite the tribe; to guard and protect the rights of those remaining in the States east will favor that object. To permit one portion of the tribe to appropriate the common property of all, to their exclusive benefit, will have the effect to cause a dominant party. The whole policy of the Principal Chief in protesting to the national council, proves it is considered that the smaller the number of the tribe the better the share. If the protest of the Principal Chief and the combination of the Cherokee agent, George Butler, esq., with the authorities of the same, be assented to by the great fathers of the whole Cherokee people against the diminutive portion of the tribe remaining in the State of North Carolina, it would exclude them of their equal interest guarantied to them by treaty and recognized by the laws of Congress, and also by the State in which they reside. But certainly as the United States were bound "to protect the Cherokees against domestic violence," and failed to do it, which was the prime cause of many of the tribes now being out of the nation, they ought not to fail to protect their interest in any treaty that might be made. The necessity of such protection on the part of the government of the United States is clearly established by past experience, which has already obtained its power by a sacrifice of the best men in the nation, to continue measures to reduce the number and prevent a union of the tribe with the view of appropriating the whole property of the Cherokee people to their own benefit.

Our right has ever been recognised to remove to the country set apart for us west of the Mississippi river. If we have a right to settle on the land at any time, it is optional with us at what period to do so. The only objection that has ever been made, or plea, by the portion of the tribe west, was, that we had failed to remove

to the lands west. Under the present observance of the assumption and combination of the principal authorities of the Cherokee nation in relation to our rights and the previous and present condition of the nation, with their midnight assassinations, has that the appearance of uniting the tribe? Does the chief majesties intend carrying out the object of their protest against the portion of the tribe east, directly against treaty stipulations and the laws of Congress, and also against the opinion of Attorney General J. J. Crittenden, of April 15, 1851, as I have shown by the selected articles of the several treaties made with the Cherokee people, and by the several acts of Congress, all of which have recognised those rights; and all provisions that have ever been made for the whole Cherokee people, have been made so as to guard the interest of the portion of the tribe east.

The act of Congress of July 29, 1848, is a further proof of their rights. It shows the intention of that benevolent body in carrying out in good faith the true construction and intention, by requiring the removal and subsistence of the eastern portion of the tribe to be so appropriated as to apply it to their use, at any time they chose to remove west, to the lands guarantied to the whole Cherokee people by the government of the United States, by patent in fee simple, according to the 2d article of the treaty of 1835.

To give further evidence of the detention of the portion of the tribe east, is the promise made to them by John Ross, the Principal Chief, to have the treaty set aside until he effected a contract on much more favorable terms, according to his discretion. They would not emigrate to the west; they held on until the terms of the treaty expired, and then they were forced by the United States troops to remove against their will or consent. Instead of setting aside the treaty, he effected a contract with General Scott for the removal of them west of the Mississippi river for a much larger sum than those were to have that removed themselves. The eighth article of the treaty limited the removal and subsistence of those that chose to remove themselves, to \$53 33. Instead of \$20 per head for removal, the chief and other chiefs were to have \$65 per head for removal, which was \$45 per head more than was paid to those Indians for removing themselves. Under this contract about twelve thousand removed west, which must have yielded to the contractors at least a profit of three hundred thousand dollars. Had the Principal Chief, after making this contract, said to the Cherokees that he had made an arrangement to remove them west, and that the terms of the treaty would have to be complied with, all the Cherokee people would have adhered to it, and would have prevented the opposition which has been the cause of the separation of the Cherokee tribe, together with

the unsettled affairs of the nation since the removal, and by other causes aforementioned.

This country is endeared to us by the graves and sacred relics of our ancestors; the bones of our children, sisters, brothers, fathers, and mothers lie here; we cannot leave them; let us remain on the land of our fathers. Why ask us to remove west? Upon the lands that we are now protested against for claiming by the executive of the nation. We once owned all the land that could be seen from the tops of our highest mountains. Will you not permit us to enjoy in peace the small quantity we have purchased, and at least allow to us our proportional share of the lands that is guarantied to the whole Cherokee people by treaty stipulations, if it should be receded to the United States? Under all circumstances, were we to leave our mother soil and join you in the west, would we have any assurance of our lives, liberty, or property?

The Indian agent, after speaking of much dissatisfaction existing relative to the North Carolina Cherokees for claiming an equal interest "in the neutral lands," says, "If those remaining in Carolina would remove west, &c., they would be received and welcomed as friends and brothers."

Where are our brothers who were forced from the mountains of North Carolina? Two-thirds have been buried in that country.

I have no hesitation in believing that we would not at once be admitted to equal rights with those subjects before us, and be welcomed by bloody hands and hospitable *graves*. Where are the Ridges, that were massacred in presence of their families, as though they were beasts; the Boudinots, that were shot and brutally murdered without knowing the accusation, and the Starrs, that were murdered on their farms, and many others, who were promised the protection of the United States—have they not been massacred? Their blood cries from the ground. Where are their midnight assassins? Have they not been pardoned by the Cherokee government without trial, contrary to both law and treaty? Why is it that the Indian agent recommends to our great father that we be required to remove west, if we have no interest there, and join a government too weak and too unjust to protect us, and leave the State where our lives, liberties, and property are secured; where our rights to remain are guarantied by solemn treaties?

If it be deemed advisable by the general government to purchase from the Cherokee people the lands proposed to be receded, the Cherokees east are not disposed to interpose objections, provided their proportion be added to the fund set apart under the act of Congress of July 29, 1848; the interest to be paid and the principal applied in the same manner as the fund set apart under

that act. But if this is not done, I claim the right, as having a common interest, and in behalf of those whom I represent in the State of North Carolina, to protest against the conclusion and ratification of the treaty; and if ratified without an amendment in our favor, will consider that the United States justly owe to the North Carolina Cherokees a sum equal to their just proportion of the common property which may be conveyed or transferred without their consent.

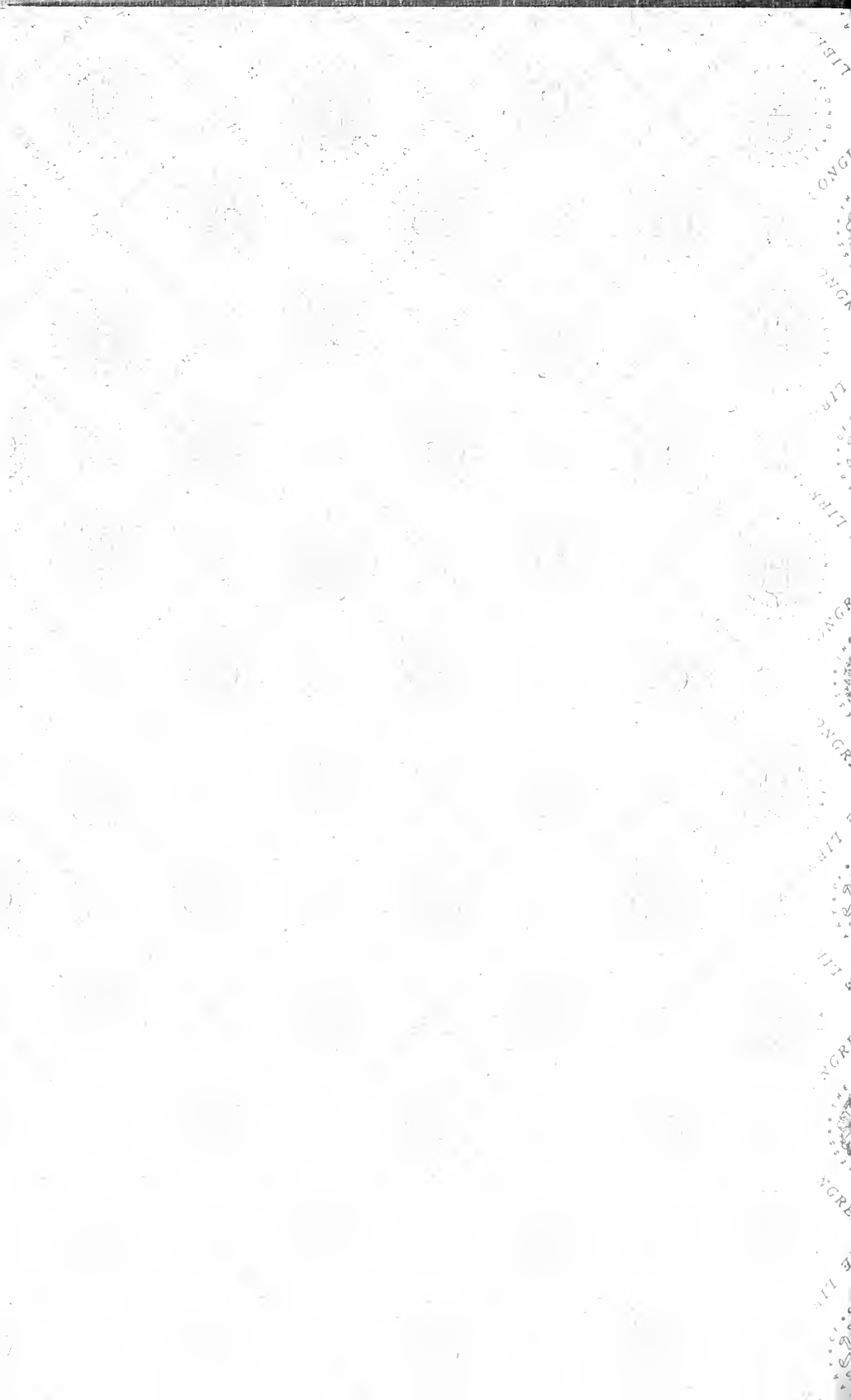
I respectfully request that this explanation of our rights be sent to the President of the United States, and filed in behalf as aforesaid.

Respectfully, your obedient servant,

JAMES TAYLOR.







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